



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 30, 1976

ATTORNEY GENERAL OPINION NO. 76-113

Roger D. Brooks
Law Librarian
Kansas Supreme Court Law Library
3rd Floor - Capitol Building
Topeka, Kansas 66612

Re: Court--Supreme Court--Operation and Management;
Classification and Cataloguing of Materials;
Procurement of Legal Publications of Other
Jurisdictions--Exchange, Sale or Loan of Library
Materials--Duplicate Law Book Fund--Legislative
Coordinating Counsel--Legislative Reference
Services by State Library--Director of Legis-
lative Reference--Legislative Library--
Supervision and Powers of Legislative Coordinating
Counsel--Dues of State Law Library and State
Departments--Public Officers; Employees of State
Library--Services--Kansas State Library in
Topeka; Composition; Services--Chief Officer--
Same; Duties of Secretary of State

Synopsis: The exchange agreements which existed between the
State Law Library as a department of the State
Law Library and foreign jurisdictions at the time of
the transfer (July 1, 1975) became the property
of the Kansas Supreme Court Law Library and under
the control of the Kansas Supreme Court Law Library.

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Dear Mr. Brooks:

As per your request of March 16, 1976, for a formal legal
opinion, I feel it is necessary to first render a brief history

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of the departments and statutes involved in order to arrive at a meaningful solution.

Historical Background

On July 1, 1975, the Law Library was separated from the Kansas State Library and became the Kansas Supreme Court Law Library as provided in K.S.A. 1975 Supp. 20-155. Prior to July 1, 1975, there were many exchange agreements between the State Library Law Division and other states for legal materials. The legal publications were used to supplement or augment the Law Library collection. Under K.S.A. 1975 Supp. 20-157, the Kansas State Library was directed to transfer all books, pamphlets and documents of a legal nature now deposited with the property of the Kansas State Library and under the supervision and control of the State Librarian to the Kansas Supreme Court Law Library. All books, records, and accounts involving the sale of Kansas Reports, Advance Sheets, Court of Appeal's Reports, and Reports and Proceedings of the Wyandotte Constitutional Convention together with the records of the State Law Library report fund shall be transferred by the State Law Librarian to the custody and control of the State Law Librarian. The State Librarian has authority to procure from other states and governments of the United States and foreign countries, societies, and institutions their documents, laws, judicial decisions, and publications by exchanging those of this state for them as per K.S.A. 1975 Supp. 72-2538. The State Librarian, however, does not have authority to exchange Kansas Reports. The Kansas Supreme Court Library per K.S.A. 1975 Supp. 20-156 has the authority to provide procurement of the acts, journals, and other publications of a legal nature of the Congress and Legislatures of the several states and territories. For such purpose, the State Law Librarian may exchange the laws, judicial decisions, books, and documents and other publications of a legal nature of the State of Kansas and agencies thereof.

On July 1, 1975, by K.S.A. 1975 Supp. 46-1212, the Legislative Reference Library was created. K.S.A. 1975 Supp. 46-1212 provides in pertinent part that:

"(a) One of the functions of the state library shall be to provide legislative reference reviews . . . Upon the advice

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and counsel of the director of legislative research and the revisor of statutes, and with due regard for avoiding unnecessary duplication of materials in the State Library and the Supreme Court Law Library, director of legislative reference shall acquire for use in the Legislative Library such books, pamphlets, documents, and periodicals as are essential and of singular importance in providing legislative research and legal and bill drafting services to the Legislature . . .

The State Law Librarian shall provide whatever assistance may be required by the director of legislative reference in acquiring, classifying, cataloguing and maintaining the library materials provided in the legislative library, and pursuant to authority granted by Section 2 (K.S.A. 20-156) of this act, the State Law Librarian shall make available on an indefinite loan to the director of legislative reference such duplicate books, sets of works, or other duplicate or temporary materials in the Supreme Court Law Library as may be needed for use of the Legislative Library. In addition, the State Law Librarian shall exchange such numbers of the legal publications of the State of Kansas, which are made available to him for such purpose, for such legal publications of other states and territories as may be needed by use in the legislative library."

A problem arises as a result of the State Law Librarian withholding specific documents and supplements from the Kansas Supreme Court Law Library which in the past had been sent to the State Library, Law Division, when a department of the Kansas State Library. The director of the legislative reference library has taken the position all the exchange agreements entered into by the State Library, Law Division, were not transferred as per K.S.A. 20-157 on July 1, 1975. The director of the legis-

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lative reference library has directed the State Librarian to withhold said supplemental material in order for the State Library to provide the service as prescribed by K.S.A. 1975 Supp. 46-1212. The director of the legislative reference library directs the State Librarian to withhold materials from the Kansas Supreme Court Law Library which has required the Kansas Supreme Court Law Library to duplicate said materials since the Kansas Supreme Court Law Library must have the supplemental material in order to carry out the mandates of K.S.A. 1975 Supp. 20-155.

The Kansas Supreme Court Law Library feels K.S.A. 20-157 which transferred all legal publications under control of the State Law Library into the Kansas Supreme Court Law Library also included the exchange agreements for legal publications which were in effect prior to the separation of the departments.

In my opinion, K.S.A. 1975 Supp. 46-1212 by requiring the director of legislative reference library to give due regard for avoiding unnecessary duplication of materials reflects the intent of the Legislature in limiting the scope of the legislative research library. The legislative research library is but one of the functions of the state library and under no circumstances should the legislative library rival the scope and volume of the State Library or the Kansas Supreme Court Law Library. The legislative reference library serves a much smaller clientele than the State Library or the Kansas Supreme Court Law Library.

The Legislature recognizing the greater number of materials maintained by the State Library and the Kansas Supreme Court Law Library has required the legislative reference library to utilize the existing materials located in both libraries. The director of the legislative reference library after taking notice of the statutory requirement to prevent undue duplication as established in K.S.A. 1975 Supp. 46-1212 must request the State Law Librarian and the State Law Librarian must provide whatever assistance may be required by the director of legislative reference in acquiring, classifying, cataloguing and maintaining the library materials provided in the legislative library and shall make available on an indefinite loan to the director of legislative reference library duplicate books, sets of works, or other duplicate or temporary material in the

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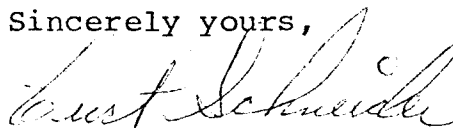
Supreme Court Law Library as may be needed for the use of the legislative library. If the director of the legislative reference library feels it is essential to acquire publications after applying the test of undue duplication, he may require the State Law Librarian to exchange such numbers of the legal publications of the State of Kansas which are made available to the State Law Librarian for such purposes for other legal publications of foreign jurisdictions.

Therefore, all agreements entered into by State Law Library as a department of the State Library before becoming the Kansas Supreme Court Law Library cannot be infringed upon by the legislative library since the legislative library must request only those materials needed by the legislative library after the director of the legislative research library applies the criteria of undue application. The director of legislative reference library, if he feels there is a necessity for said legal publications, must advise the State Law Librarian to obtain the necessary legal publications and follow the provisions of K.S.A. 1975 Supp. 46-1212.

In my opinion, K.S.A. 1975 Supp. 20-157 which mandated the transfer of all books, pamphlets, and documents of a legal nature from the Kansas Library to the Kansas Supreme Court Law Library must have included the existing exchange agreements. In order for the books, pamphlets, and documents to provide the necessary information and be of value, supplementary materials are a necessity. It would be contradictory for the statute to require the transfer of books, pamphlets, and documents which would be worthless to those for which it is to serve, namely, judicial, legislative, and executive branches of the state government and to members of the bar of the State of Kansas (K.S.A. 1975 Supp. 20-155).

In summary, exchange agreements which existed between the State Law Library as a department of the State Library and foreign jurisdictions which existed at the time of the transfer (July 1, 1975) became the property of the Kansas Supreme Court Law Library and under the control of the Kansas Supreme Court Law Library.

Sincerely yours,



CURT T. SCHNEIDER
Attorney General